

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY, )  
Plaintiff )  
v. )  
ADP MARSHALL, INC., a FLUOR DANIEL COMPANY, and )  
FIREMAN'S FUND INSURANCE COMPANY, )  
Defendants )  
\_\_\_\_\_  
ADP MARSHALL, INC., )  
Plaintiff-in-Counterclaim, )  
v. )  
MASSACHUSETTS DEVELOPMENT FINANCE AGENCY, )  
Defendant-in-Counterclaim )  
\_\_\_\_\_  
ADP MARSHALL, INC., )  
Third-Party Plaintiff )  
v. )  
ALLIED CONSULTING ENGINEERING SERVICES, INC., )  
ANDOVER CONTROLS CORPORATION, R&R WINDOW )  
CONTRACTORS, INC. and DELTA KEYSAN, INC. n/k/a )  
DELTA KEYSAN, LLC, )  
Third-Party Defendants )  
\_\_\_\_\_  
)

MAP 100-5 P 1:37  
U.S. DIST. COURT  
DIST. OF MASS.  
CIVIL ACTION  
NO. 04-CV-10203-PBS

**ANSWER AND JURY DEMAND OF THE THIRD-PARTY DEFENDANT,**  
**ALLIED CONSULTING ENGINEERING SERVICES, INC.,**  
**TO THE THIRD-PARTY COMPLAINT**

The Third-Party Defendant, Allied Consulting Engineering Services, Inc. ("Allied"), responds as follows to the allegations set forth in the Third-Party Complaint:

1. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Third-Party Complaint.

2. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Third-Party Complaint.

3. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Third-Party Complaint.

4. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Third-Party Complaint.

5. Admitted.

6. The agreement between the Massachusetts Development Finance Agency (“MDFA”) and ADP Marshall, Inc. (“ADPM”) is a document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

7. The agreement between ADPM and Allied is a document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

8. The agreement between ADPM and Andover Controls Corporation (“Andover Controls”) is a document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

9. The agreement between ADPM and R&R Window Contractors, Inc. (“R&R”) is a document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

10. The agreement between APDM and Delta Keyspan, Inc. (“Delta Keyspan”) is a written document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

11. Admitted.

12. The listing of outstanding work items is a written document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

13. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Third-Party Complaint.

14. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Third-Party Complaint.

15. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Third-Party Complaint. Further answering, Allied admits that it received correspondence from ADPM dated November 18, 2002 that included correspondence from Whelan Associates, LLC dated September 6, 2002.

16. The November 7, 2002 correspondence between ADPM and MDFA is a written document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

17. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Third-Party Complaint.

18. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Third-Party Complaint.

19. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Third-Party Complaint.

20. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Third-Party Complaint. Answering further, the MDFA Complaint is a written document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

21. The Delta Subcontract is a written document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

22. The R&R Subcontract is a written document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

23. The Andover Subcontract is a written document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

24. The Allied Subcontract is a written document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

25. The January 26, 2004 correspondence from ADPM to Delta Keyspan is a written document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

26. The January 26, 2004 correspondence from ADPM to R&R is a written document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

27. The January 26, 2004 correspondence from ADPM to Andover Controls is a written document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

28. The January 26, 2004 correspondence from ADPM to Allied is a written document that speaks for itself, and therefore Allied denies the allegations that are inconsistent with or go beyond the terms of that document.

29. Denied to the extent that the allegations suggest that Allied is obligated to indemnify and defend ADPM. Allied is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 29.

**COUNT I**  
**(Breach of Contract – Delta Keyspan)**

30. Allied incorporates by reference its answers to paragraphs 1 through 29 above.
31. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 31 of the Third-Party Complaint.
32. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 32 of the Third-Party Complaint.

**COUNT II**  
**(Breach of Contract – R&R)**

33. Allied incorporates by reference its answers to paragraphs 1 through 32 above.
34. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 34 of the Third-Party Complaint.
35. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Third-Party Complaint.

**COUNT III**  
**(Breach of Contract – Andover Controls)**

36. Allied incorporates by reference its answers to paragraphs 1 through 35 above.
37. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Third-Party Complaint.
38. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 38 of the Third-Party Complaint.

**COUNT IV**  
**(Breach of Contract – Allied Consulting)**

39. Allied incorporates by reference its answers to paragraphs 1 through 38 above.
40. Denied.
41. Denied.

WHEREFORE, Allied respectfully requests that this Court dismiss ADPM's claims against Allied and award Allied its costs, interest, and attorneys' fees incurred in the defense of this action.

**COUNT V**  
**(Indemnification and Contribution – Delta Keyspan)**

42. Allied incorporates by reference its answers to paragraphs 1 through 41 above.  
43. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 43 of the Third-Party Complaint.

**COUNT VI**  
**(Indemnification and Contribution – R&R)**

44. Allied incorporates by reference its answers to paragraphs 1 through 43 above.  
45. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 45 of the Third-Party Complaint.

**COUNT VII**  
**(Indemnification and Contribution – Andover Controls)**

46. Allied incorporates by reference its answers to paragraphs 1 through 45 above.  
47. Allied is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 47 of the Third-Party Complaint.

**COUNT VIII**  
**(Indemnification and Contribution – Allied Consulting)**

48. Allied incorporates by reference its answers to paragraphs 1 through 47 above.  
49. Denied.

WHEREFORE, Allied respectfully requests that this Court dismiss ADPM's claims against Allied and award Allied its costs, interest, and attorneys' fees incurred in the defense of this action.

**JURY CLAIM**

Allied hereby demands a trial by jury to the fullest extent permitted by law.

**FIRST AFFIRMATIVE DEFENSE**

The Third-Party Complaint fails to state a claim against Allied upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

The claims against Allied are barred by the doctrines of waiver and/or estoppel.

**THIRD AFFIRMATIVE DEFENSE**

Allied acted in good faith with respect to decisions, determinations and other actions performed and, therefore, is entitled to immunity from claims asserted in this action.

**FOURTH AFFIRMATIVE DEFENSE**

The claims against Allied are barred by laches.

**FIFTH AFFIRMATIVE DEFENSE**

The claims against Allied are barred because Allied has performed all of its obligations under its agreement with ADPM.

**SIXTH AFFIRMATIVE DEFENSE**

The claims against Allied are barred by the terms of the agreement between Allied and ADPM.

**SEVENTH AFFIRMATIVE DEFENSE**

If the plaintiff were damaged as alleged, which Allied denies, then said injury resulted from the acts and/or omissions of persons or entities for whose conduct Allied is neither legally liable nor responsible. Accordingly, ADPM would not be entitled to recover from Allied.

**EIGHTH AFFIRMATIVE DEFENSE**

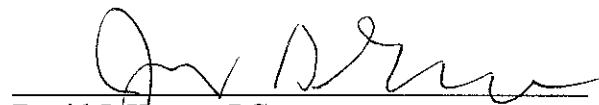
If the plaintiff were damaged as alleged, which Allied denies, then said injury resulted from the plaintiff's own negligent acts and/or omissions. Accordingly, ADPM would not be entitled to recover from Allied.

**NINTH AFFIRMATIVE DEFENSE**

If the plaintiff establishes liability against ADPM it will be as a result of the direct and active negligence or other wrongdoing of ADPM and not as a result of alleged acts, errors or omissions of Allied. Accordingly, ADPM would not be entitled to recover contribution or indemnity from Allied.

**WHEREFORE**, Allied Consulting Engineering Services, Inc., respectfully requests that the Third-Party Complaint be dismissed with prejudice and judgment entered in Allied's favor on the merits, that Allied be awarded costs and attorneys' fees, and that Allied be granted such further relief as this Court may deem just and proper.

Respectfully submitted,  
ALLIED CONSULTING ENGINEERING  
SERVICES, INC.,  
By its attorneys,



\_\_\_\_\_  
David J. Hatem, PC  
B.B.O. #225700  
Jay S. Gregory, Esquire  
B.B.O. #546708  
DONOVAN HATEM LLP  
Two Seaport Lane  
Boston, MA 02210  
Tel: (617)406-4500

Dated: 3/31/04

00821053

**CERTIFICATE OF SERVICE**

I, Jay S. Gregory, Esquire, hereby certify that on this 3 day of March, 2004, I served the attached *Answer* by mailing a copy thereof, postage pre-paid to:

Andrew J. Tine, Esquire  
Haese, LLC  
70 Franklin Street, 9<sup>th</sup> Floor  
Boston, MA 02210

Edward F. Vena, Esquire  
Vena, Riley, Deptula, LLP  
250 Summer Street, 2<sup>nd</sup> Floor  
Boston, MA 02210

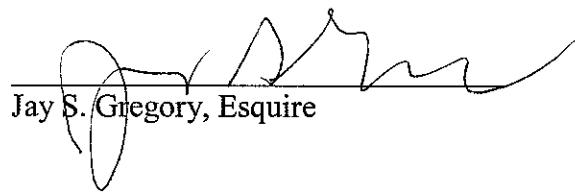
Dwight T. Burns, Esquire  
Domestico, Lane & McNamara, LLP  
161 Worcester Road  
Framingham, MA 01701

Edward Coburn, Esquire  
Taylor, Duane, Barton & Gilman, LLP  
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Boston, MA 02109

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Jay S. Gregory, Esquire

00821053

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COUNSELORS AT LAW

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U.S. DISTRICT COURT  
BOSTON, MASS.

April 2, 2004

Civil Clerk's Office  
U.S. District Court  
John Joseph Moakley U.S. Courthouse  
One Courthouse Way,  
Boston, Massachusetts 02210

**Re: *Massachusetts Development Finance Agency v. ADP Marshall, et al***  
***Civil Action No. 04-CV-10203-PBS***  
**DH File No. 2500.1940**

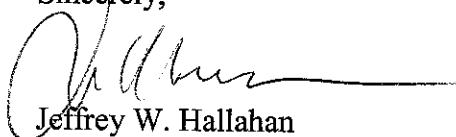
Dear Sir/Madam:

Enclosed please find the following for filing in the above-referenced matter: "*Answer and Jury Demand of the Third-Party Defendant, Allied Consulting Engineering Services, Inc., to the Third-Party Complaint.*"

Kindly acknowledge receipt of the same by signing and returning the enclosed postage-paid postcard.

Thank you for your assistance with this matter.

Sincerely,



Jeffrey W. Hallahan

JWH/lam  
Enclosures

cc: David J. Hatem, PC  
Jay S. Gregory, Esq.  
Andrew J. Tine, Esquire  
John J. McNamara, Esquire  
Edward F. Vena, Esquire  
Charles A. Plunkett, Esquire  
Dwight T. Burns, Esquire  
Edward Coburn, Esquire  
James J. Duane, Esquire